IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 09/659,915	§	Examiner: Fisher, Michael J.
Filed: September 11, 2000	§	Group/Art Unit: 3629
Inventor:	§	Atty. Dkt. No: 5181-63600
Thomas E. Saulpaugh	§	
Gregory L. Slaughter	§	
Eric Pouyoul	§	
Michael J. Duigou	§	
Title: Automatic Lease Renewal with Message Gates in a Distributed Computing Environment	§	

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date indicated below.

Robert C. Kowert
Name of Registered Representative

Signature — September 8, 2005 Date

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. The review is requested for the reason(s) stated below.

Claims 1-50 are pending in the application. Reconsideration of the present case is earnestly requested in light of the following remarks. Please note that for brevity, only primary arguments directed to selected claims are presented, and that additional arguments, e.g., directed to the subject matter of additional claims, will be presented if and when the case proceeds to Appeal.

Claims 1-50 are rejected under the judiciary created doctrine of obviousness-type double patenting as being unpatentable over claims of Waldo et al. (U.S. Patent 6,237,009) (hereinafter "Waldo"). Applicants note the following clear errors in the Examiner's rejection.

Applicants' claim 1 recites that the same message endpoint used by the client process to send and receive messages for accessing the resource provided by the service also sends the lease renewal response message automatically without intervention by the client process. In contrast, Waldo teaches a lease manager that manages a lease on behalf of a client, but Waldo does not teach or suggest that his lease manager is also used by a client as a client message endpoint to send and receive messages to access a leased resource provided by a service.

The Examiner argues that it would be obvious to automate the process claimed by Waldo. However, even if the lease management system in Waldo were automated, it would not suggest that the same message endpoint used by the client process to send and receive messages *for accessing the resource* provided by the service also sends the *lease renewal response message.* As noted above, Waldo teaches a least manager that manages a lease on behalf of a client, but which is clearly not used to access a leased resource provided by a service. Thus, Applicants' claim 1 is clearly not obvious from the claims of Waldo. Similar arguments apply to independent claims 12, 24, 33, 41 and 46.

In response to Applicants' arguments, the Examiner responds, in the Response to Arguments section of the Final Action, "the client message endpoint would be the email program used to send and receive email." **However, Waldo does not use email messages in his lease renewal service.** Instead, as described in Applicants' previous responses, Waldo's distributed garbage collection scheme utilizes remote method invocation (RMI) for clients to interact with the lease manager by invoking the methods exposed by the lease manager. Email messages and email programs are not part of Waldo's system. In fact, **a search of the Waldo reference fails to produce a single reference to email messages or email programs**. Thus, the Examiner's statement is completely unsupported by the Waldo reference and is based solely on the Examiner's own erroneous speculation.

In the Advisory Action the Examiner asserts that sending messages using a network would implicitly be email, citing the Abstract of Waldo. The Examiner also states, "[u]sing computers to send messages to other user's computers would be email." The Examiner is clearly incorrect. As is well understood by those of ordinary skill in the art, there are many different types of message-based communication between computers using a network. As noted above, Waldo does not use email messages. Waldo's lease manager and client are not entities using email programs or protocols to send and receive email messages. Instead, they are explicitly described in Waldo as computer processes communicating with other computer processes via RMI. As anyone of ordinary skill in the art knows, RMI does not employ any aspect of email. Furthermore, the exact nature of the messaging system used in Waldo is irrelevant to Applicants' argument. Waldo does not teach or suggest that the same message endpoint used by the client process to send and receive messages for accessing the resource provided by the service also sends the lease renewal response message. Nor would it be obvious to modify Waldo to include such a message endpoint. As noted above, Waldo teaches a lease manager for managing leases separate from anything used by a client process to send and receive messages for accessing a resource provided by a service.

For the reasons stated above, Applicants respectfully request removal of the obviousness-type double patenting rejection.

Claims 1-50 under 35 U.S.C. § 103(a) as being unpatentable over Wollrath et al. (U.S. Patent 5,832,529) (hereinafter "Wollrath"). Applicants note the following clear errors in the Examiner's rejection. **The Examiner has failed to provide support for a *prima facie* rejection of claims 1, 12, 24 33, 41 and 46.**

Regarding claim 1, Wollrath clearly fails to teach or suggest a client message endpoint receiving a lease renewal request message that references the resource provided by the service. The Examiner cites claims 1, 9, 11 and 52, FIG. 2 and the Abstract of Wollrath, none of which describe or illustrate anything regarding receiving a *lease renewal request* message. Instead, claims 1, 11 and 52, FIG. 2 and the Abstract of Wollrath simply describe a process by which a client may obtain a shared lease for a resource for a granted lease period. Claim 9 of Wollrath

mentions sending a request to a process for a new lease period upon a determination that the granted lease period is about to expire. However, this determination is made by the user of the resource based on the length of the granted lease period. The portions of Wollrath cited by the Examiner mention nothing of a client message endpoint *receiving a lease renewal request message* that references the resource provided by the service.

Additionally, Wollrath does not teach or suggest a client message process sending a *lease renewal response* message automatically without intervention by the client process, wherein the client process is configured to send and receive messages via the same client message endpoint to access the resource provided by the service. The Examiner argues that it would be obvious to automate the lease renewal process in light of the teachings of Wollrath. First of all, as noted above, Wollrath does not mention anything regarding lease renewal messages and lease renewal response messages. Wollrath only mentions sending a request to a process for a new lease period upon a determination by the user of the resource that the granted lease period is about to expire. The portions of Wollrath cited by the Examiner do not teach anything regarding a client message endpoint receiving a lease renewal request message and sending a lease renewal response message. Even if the lease management of Wollrath were automated, it would not suggest a client message endpoint that receives a lease renewal request message and sends a lease renewal response message.

In response, the Examiner argues, "the processes of renewing and originating a lease are similar in their basics, a paper denoting lease terms must be negotiated and signed by both parties" (Response to Arguments, Final Action). This statement by the Examiner indicates a clear misunderstanding of both Applicants' claimed invention and the teachings of Wollrath. Neither Applicants' claimed invention nor Wollrath has anything to do with paper leases signed by parties. Wollrath does not mention any paper lease documents, nor is Wollrath concerned with paper lease documents. Instead, Wollrath teaches a method of distributed garbage collection involving computer processes allocating and deallocating computer resources. The Examiner is apparently confusing commercial leases between people or companies with the concept of computer processes leasing computer resources from computers or processes. A computer process leases a computer resource, as described in Wollrath, does not inherently require or suggest lease renewal messages and lease renewal response messages.

Furthermore, Wollrath does not teach or suggest that the same message endpoint used by the client process to send and receive messages *for accessing the resource* provided by the service *also sends the lease renewal response message* automatically without intervention by the client process. As Wollrath already includes two separate mechanisms for separately accessing a leased resource and for lease management communications, even if the lease management of Wollrath were automated, it would not suggest that the same message endpoint used by the client process to send and receive messages for accessing the resource provided by the service also sends the lease renewal response message automatically without intervention by the client process.

In response, the Examiner argues, in the Advisory Action, that communication in Wollrath's system is implicitly email based and that the "message endpoint would be the email system used" and contends that such a email system would be used both for accessing a leased resource and for sending lease renewal response messages. However, as with the Waldo reference described above, Wollrath's system does not rely on, or even include, email messages or email systems. As with Waldo's system, Wollrath relies upon remote method invocation (RMI) to communication and interaction between the various components. The Examiner's statements regarding email are completely incorrect and irrelevant.

The Examiner also states in the Advisory Action, "the use of email would not make the instant application patentably distinct." However, Applicants' claims do not recite any email messages and Applicants have not argued that the use of email would make Applicants' claims patentably distinct. In contrast, as noted above, the Examiner's arguments regarding email are both incorrect and irrelevant to Applicants' arguments.

The Examiner has clearly misunderstood the teachings of the cited prior art as well as Applicants' claimed invention. For example, the Examiner seems to be confusing commercial advertisements for goods or services with computer service advertisements that include information to enable access by *computer-based client processes* to resources provided by *computer-based service processes* and made available to the client processes. For example, regarding claim 9, the Examiner states in the Response to Arguments, "[t]he offer of renewal of a lease would be considered to be an advertisement as it is a message for the purpose of eliciting a monetary response from the viewer." The types of commercial leasing and advertising the Examiner is referring to have absolutely no relevance to Applicants' claims or to the Waldo and Wollrath references.

Regarding claim 10, the Examiner asserts that it "would be inherent that the messages are in a data representation language as they represent data." The Examiner's statement is completely incorrect. Wollrath does not describe sending messages in a data representation language. Instead, Wollrath teaches that the various components of his system communicate via making calls to each other, such as Wollrath's "clean" and "dirty" calls. Wollrath is referring to procedure calls between software components, which may include remote procedure calls (RMI). Procedure calls and remote procedure calls between software components do not traditionally use messages in a data representation language. Data for such calls is generally encoded in a message, such as through the process of marshalling, not described using a data representation language (such as XML).

The Examiner also argues that the use of data representation language would be inherent in Wollrath because "computers inherently represent data in languages they can understand" (see, Response to Arguments of Final Action and Advisory Action). The Examiner has apparently misunderstood the term "data representation language". Messages between computer processes do not inherently use a data representation language just because they include data. Messages including data were used long before data representation languages were available. A data representation language (e.g. XML) is a specific type of language used for describing or representing data (e.g. content) in a particular manner. It is not inherent to use a data representation language for a message merely because the message includes data, as suggested by the Examiner. Most of the languages referred to by the Examiner (Basic, Fortran, C++, etc) are programming language and are not data representation languages as data representation languages are understood by those of ordinary skill in the art. One skilled in the art would not recognize Basic, Fortran, or Java as data representation languages, instead they are *programming* languages. Additionally, the Examiner's statements regarding programming languages bears absolutely no relevance to *messages in a data representation language.*

The Examiner also mentions XML. However, Wollrath does not mention XML. The Examiner has not cited any prior art that teaches or suggests the use of XML, as recited in claim 10. Moreover, just because XML may have been known in the art at the time of Wollrath's invention does not imply that it would be obvious to modify Wollrath to use XML or any other data representation language for messages. Thus, the rejection of claim 10 is not supported by the

cited art and removal thereof is respectfully requested. Remarks similar to those above regarding claim 10 also apply to claims 22, 31, 39, 44 and 49.

The Examiner's rejection of many of the other dependent claims is additionally erroneous. For example, the cited art is clearly insufficient to support the rejection of claims 8, 9, 11, 16, 17, 20, 21, 23, 30, 32, 36, 38, 40, 45 and 50, as discussed in detail in Applicants' previous response starting on page 6.

In light of the foregoing remarks, Applicant submits the application is in condition for allowance, and notice to that effect is respectfully requested. If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicants hereby petition for such an extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 501505/5181-63600/RCK.

Also enclosed herewith are the following items:

☒ Return Receipt Postcard
☒ Notice of Appeal

Respectfully submitted,

Robert C. Kowert
Reg. No. 39,255
ATTORNEY FOR APPLICANT(S)

Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C.
P.O. Box 398
Austin, TX 78767-0398
Phone: (512) 853-8850

Date: August 26, 2005